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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

TRANS-PACIFIC AVIATION SERVICES, INC.,) CASE NUMBER 08-CV-00139 CRB

Plaintiff(s),)

v.)

**JOINT CASE MANAGEMENT
 STATEMENT**

PRIMARIS AIRLINES, INC., et al.,)

Defendant(s).)

Conference: July 21, 2008
 9:00 a.m.

PRIMARIS AIRLINES, INC.,)

Counter Claimant,)

v.)

Judge: The Honorable Charles R. Breyer

TRANS-PACIFIC AVIATION SERVICES, INC.,)
 et al.,)

Counter-Defendant(s).)

CURRENT STATUS

On April 18, 2008 an Initial Case Management Conference was held before the Honorable Charles R. Breyer. Judge Breyer transferred the matter to Magistrate Judge Bernard Zimmerman. An initial meeting between the parties and Judge Zimmerman was held that same day and a Settlement Conference was scheduled for July 8, 2008.

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2 Before the Settlement Conference could be held, PRIMARIS' lead attorney requested to
3 withdraw as counsel citing a breakdown in the communications with client due unpaid outstanding
4 fees. The court denied the request citing a corporation's inability to appear in propria persona.
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6 The Settlement Conference was held as scheduled. TRANS-PACIFIC's attorneys were
7 present for Plaintiff and PRIMARIS' local counsel and Chief Financial Officer, Sherry Cooke-Hurm,
8 appeared for Defendant.

9 The parties tentatively agreed to meet on either July 29th or 30th, review all the invoiced bills
10 claimed, and determine a fair resolution to be paid within sixty (60) days following the date of
11 agreement. There would be a stipulation to a confession of judgment in that amount to be filed in the
12 event of default. Should PRIMARIS fail to pay, after the 60 day mark, TRANS-PACIFIC will
13 proceed to collections.
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15 TRANS-PACIFIC is currently awaiting for PRIMARIS to finalize the date and location of
16 the settlement meeting. A telephonic settlement conference is scheduled with Judge Zimmerman on
17 August 4, 2008 at 3:00pm.
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20 **FACTS OF THE CASE**

21 Plaintiff/Counter Defendant TRANS-PACIFIC AVIATION SERVICES, INC. ("TRANS-
22 PACIFIC") is an aircraft maintenance and ground services company based in Oakland,
23 California. Defendant/Counter Claimant PRIMARIS AIRLINES, INC. ("PRIMARIS") is an
24 airline headquartered in Las Vegas, Nevada.
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26 In October of 2006, PRIMARIS engaged TRANS-PACIFIC to perform aircraft ground
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2 and maintenance services on its Boeing 757 aircraft. On or about October 27, 2006, TRANS-
3 PACIFIC and PRIMARIS entered into written Standard Ground Handling Agreement
4 (hereinafter "AGREEMENT") under which TRANS-PACIFIC agreed to provide these services
5 for PRIMARIS. The AGREEMENT set out a pricing schedule which PRIMARIS agreed to pay.
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7 When the AGREEMENT was entered into, TRANS-PACIFIC's business operation was
8 in Oakland, California. In order to better serve PRIMARIS' fleet, PRIMARIS and TRANS-
9 PACIFIC agreed to have TRANS-PACIFIC establish an additional facility at John F. Kennedy
10 International Airport in New York (herein "JFK"). The AGREEMENT specifies that if it was
11 terminated within the first two years, PRIMARIS would reimburse TRANS-PACIFIC the start-
12 up costs of opening the JFK facility. These JFK start up costs are alleged by Tran-Pacific to
13 amount to approximately \$210,900.00.
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16 PRIMARIS' last payment to TRANS-PACIFIC under the AGREEMENT was August 23,
17 2007. TRANS-PACIFIC last provided services to PRIMARIS on September 8, 2007.
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19 On or about October 16, 2007, PRIMARIS terminated (alleged to be justified and for
20 cause by Primaris) the AGREEMENT and refused to make payment on TRANS-PACIFIC's
21 invoices for claimed services in the amount of \$365,215.13.
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23 On November 6, 2007 TRANS-PACIFIC initiated this suit in Alameda County Superior
24 Court claiming two causes of action: (1) Breach of Contract and (2) Common Counts. The
25 action was subsequently removed by PRIMARIS to the United States District Court for the
26 Northern District of California.
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28 On or about December 2007, TRANS-PACIFIC filed and recorded liens with the FAA

Aircraft Registry on the three PRIMARIS Boeing 757 aircraft upon which TRANS-PACIFIC had provided services.

On or about January 15, 2008, PRIMARIS filed a Counter Claim against TRANS-PACIFIC claiming six causes of action: (1) Breach of Contract, (2) Unjust Enrichment, (3) Slander of Title, (4) Intentional Interference with a Contractual Relationship, (5) Accounting, and (6) Declaratory Relief.

CLAIMS AND DEFENSES

ORIGINAL COMPLAINT

TRANS-PACIFIC has alleged the following claims: (1) Breach of Contract; and (2) Common Counts.

PRIMARIS admits there was an agreement dated October 27, 2006 but otherwise denies all allegations in the complaint and has asserted nineteen affirmative defenses¹.

COUNTERCLAIM

PRIMARIS has alleged the following counterclaims: (1) Breach of Contract; (2) Unjust Enrichment; (3) Slander of Title; (4) Intentional Interference with Contractual Relationship; (5) Accounting; and (6) Declaratory Relief.

TRANS-PACIFIC denies any liability under said counterclaims and has asserted nine

¹PRIMARIS has asserted the following nineteen affirmative defenses: (1) Failure to State a claim; (2) Acts of Third Parties; (3) Failure to Name Indispensable Party; (4) Intervening Cause; (5) Statute of Limitations; (6) Voluntary Waiver; (7) Failure to Plead with Sufficient Specificity; (8) Failure to Mitigate Damages; (9) Laches, Estoppel, and Waiver; (10) Good Faith Controversy Justifying Costs; (11) No Duty Owed; (12) Waiver by Own Acts or Omissions; (13) Unclean Hands; (14) Statute of Frauds; (15) Lack of Standing; (16) Approval of Alleged Acts; (17) Full Performance; (18) Rule 8; and (19) Rule 11.

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2 affirmative defenses².

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5 **PROCEEDINGS TO DATE**

6 TRANS-PACIFIC originally filed its complaint in Alameda Superior Court on November 6,
7 2007. PRIMARIS had the matter removed to this Court on January 9, 2008. PRIMARIS filed its
8 Answer and Counterclaim on January 16, 2008.

9 Both parties stipulated to alternative dispute resolution on April 16, 2008.

10 A Case Management Conference was held before Judge Charles Breyer on April 18, 2008,
11 and the matter was transferred to the Magistrate Judge Zimmerman. A meeting of all counsel with
12 Magistrate Judge Zimmerman was held the same day and a settlement conference was set for July 8,
13 2008.

14 Events following this conference are set forth above in the 'Current Status' section.

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18 **DISCOVERY**

19 Both parties have complied with initial document disclosures. No discovery outside of initial
20 document disclosure has taken place. TRANS-PACIFIC believes three months would be required for
21 the following:

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23 A. Discovery be conducted of all documents PRIMARIS intends to use to substantiate
24 its Counterclaims; and

25
26 ² TRANS-PACIFIC has asserted the following nine affirmative defenses: (1) Failure to State a
27 Claim; (2) Acts of Third Parties; (3) Defendant's Negligence; (4) Assumption of Risk; (5) Contractual Release
28 Provisions, Paragraph 4, Release, Indemnity and Insurance, subsection 4.2; (6) Contractual Release Provisions,
Paragraph 4, Release, Indemnity and Insurance, subsection 4.3; (7) Waiver; (8) Unclean Hands; and (9) Rule 11.

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2 B. Depositions be taken of any persons PRIMARIS intends to use to substantiate its
3 Counterclaims.
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5 PRIMARIS has requested a 300 day discovery schedule citing the parties are located in
6 different states and many of the services upon which TRANS-PACIFIC's claims are based were
7 performed in New York.
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11 **RELIEF SOUGHT**

12 TRANS-PACIFIC is seeking the following economic damages as stated in the complaint:

13 (1) damages of \$576,115.13 as agreed to in the contract consisting of

14 (A) Goods and services provided (\$365,215.13);

15 (B) JFK start-up costs (\$210,900.00);
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17 (2) Interest on the amounts due and owing at the rate of 10%, computed from September 8,
18 2007, the last date upon which TRANS-PACIFIC performed services for PRIMARIS (\$50,035.20 on
19 July 21, 2008).
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21 PRIMARIS is seeking the following damages as stated in the counterclaim:
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23 (1) Actual Damages in an amount in excess of \$75,000;

24 (2) Special Damages in an amount in excess of \$75,000;

25 (3) Consequential Damages in an amount in excess of \$75,000;

26 (4) An immediate release of any and all liens which TRANS-PACIFIC has against aircraft
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2 leased and used by PRIMARIS;

3 (5) An accounting;

4 (6) Declaratory Relief regarding the rights and obligations of the parties;

5 (7) Attorneys' fees and costs of suit incurred herein; and

6 (8) For such other and further relief as this Court deems just and proper.

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10 **LEGAL ISSUES**

11 There have been no disputed points of law identified to date.

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13 **MOTIONS**

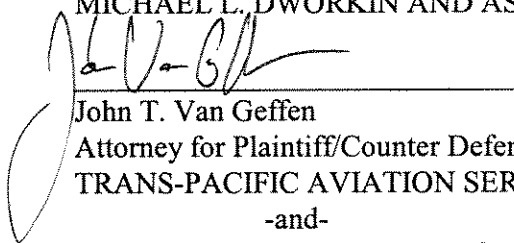
14 No motions are pending or currently anticipated by either TRANS-PACIFIC or
15 PRIMARIS.

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18 **AMENDMENT OF PLEADINGS**

19 Neither party intends to join additional parties or claims at this time.

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22 Dated: July 14, 2008

MICHAEL L. DWORKIN AND ASSOCIATES

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24 
John T. Van Geffen

25 Attorney for Plaintiff/Counter Defendant,
TRANS-PACIFIC AVIATION SERVICES, INC.

26 -and-

27 On behalf of and at the request of Defendant/Counter
28 Claimant, PRIMARIS AIRLINES, INC.